

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

HEARING OFFICER DIRECTIVE

DOCKET NOS. 2017-370-E, 2017-207-E, 2017-305-E ORDER NO. 2018-96-H

JULY 20, 2018

David Butler
Hearing Officer

DOCKET DESCRIPTION:

Docket No. 2017-370-E – Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

Docket No. 2017-207-E – Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent

Docket No. 2017-305-E – Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920

MATTERS UNDER CONSIDERATION:

ORS'S Request to Take Testimony of Witnesses by Oral Deposition

HEARING OFFICER ACTION:

The Request is granted as explained herein. First, ORS requests permission to depose the following witnesses, pursuant to 10 S.C. Ann. Regs. 103-834, said witnesses having been identified as having knowledge of facts relevant to the issues to be decided by the Commission:

- 1. Kevin Marsh, former Chief Executive Officer and President, SCANA Corp.;**
- 2. Jimmy Addison, Chief Executive Officer and President, SCANA Corp.;**

- 3. Stephen Byrne, former Chief Operating Officer, SCANA;**
- 4. Carlette Walker, former Vice President of Finance for nuclear construction, SCE&G;**
- 5. SCE&G Rule 30(b)(6) witness(es);**
- 6. Westinghouse Electric Company ("WEC") Rule 30(b)(6) witness(es);**
- 7. Chicago Bridge & Iron (CB&I") Rule 30(b)(6) witness(es);**
- 8. Ty Troutman, General Manager, Nuclear Power, Bechtel;**
- 9. Lonnie Carter, former President of Santee Cooper;**
- 10. Michael Crosby, Senior Vice President, Nuclear Energy, Santee Cooper;**
- 11. George Wenick, Attorney for SCE&G;**
- 12. Ronald A. Jones, former Vice President for New Nuclear Operations, SCE&G;**
- 13. Brian McIntyre, former V.C. Summer Licensing Director, WEC;**
- 14. Dan Magnarelli, former Director Construction Integration, WEC;**
- 15. Terry Elam, WEC Project Controls Officer;**
- 16. Danny Roderick, Former President and CEO of WEC (2012-2016);**
- 17. Marion Cherry, Santee Cooper VCS Site Supervisor**

According to ORS, these individuals would be deposed concerning all or some of the following topics:

- The steps that SCE&G took to ensure it became aware of likely delays in the construction schedules and likely capital cost overruns at the Project ,including but not limited to the date(s) when SCE&G took such steps;**
- SCE&G's knowledge of delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the date(s) when SCE&G became aware of such facts;**
- The decisions SCE&G made about how to prevent further delays in the construction schedules and capital cost overruns at the Project; including but not limited to the bases for such decisions and the alternative courses of action considered;**
- SCE&G's disclosures to the Commission and ORS of likely delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the timing and extent of such disclosures;**
- The reasons for any delay or omission in SCE&G's disclosures to the Commission and ORS of facts known by SCE&G regarding likely delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the omission of any information provided to SCE&G by Bechtel Corporation or any other audit or review of the Project.**
- The facts and analyses known by SCE&G, and the analyses made by SCE&G, relating to any decision to cease construction and/or abandon the Project, including**

but not limited to the date(s) when SCE&G became aware of such facts and analyses as well as the conclusions reached in those analyses;

- **The reasons for any delay or omission in SCE&G's disclosures to the Commission and ORS of facts or analyses relating to any decision by SCE&G to cease construction and/or abandon the Project;**
- **All facts and reasons that SCE&G contends support or demonstrate SCE&G's decision to cease and/or abandon construction of the Project was prudent and not imprudent;**
- **The costs and delays associated with the Project that SCE&G acknowledges it failed to anticipate or avoid, or failed to minimize (if any);**
- **All facts relating to the prudence of SCE&G's failure to anticipate or avoid costs related to the Project, or to minimize the magnitude of such costs, including but not limited to any facts that SCE&G contends demonstrates that such failure was not imprudent.**

ORS requests that, due to the number of depositions that must be taken in this matter, it believes that, rather than setting a specific time and location for each deposition, it would be more efficient for the Commission to permit ORS to conduct the depositions during a window of time between July through September 2018, and at a location that is convenient for the parties and witnesses, all of which would necessitate an agreement among the parties as to exact times and places. The depositions would be by oral examination. ORS may request permission to take depositions of other individuals at a later time.

There does not seem to be a disagreement as to the reasonableness of ORS taking the depositions among the parties that have filed responses on the issue. For this reason, and for other reasons cited by ORS, I find the request to be meritorious in general. There are some concerns expressed by the Joint Response of South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Incorporated (together, "the Joint Respondents") as to procedural matters related to the depositions. With regard to the ORS depositions of witnesses who overlap with the ratepayer litigation, the Joint Respondents assert that the Commission should require ORS to coordinate these depositions with the existing litigation on "reasonable terms." Specifically, SCE&G asks that the Commission order: (1) that ORS shall be subject to the same terms governing depositions in the ratepayer litigation, including, but not limited to any applicable confidentiality agreements applicable in the other proceeding and (2) that ORS coordinate with counsel for other parties, including SCE&G, to avoid duplicate depositions.

First, although it is clear that the terms of S.C. Code Ann. Section 58-4-55 (D) (As amended June 27, 2018) provide that a public utility such as SCE&G may seek a protective order in discovery matters, this Hearing Officer is somewhat limited as to what relief can be granted under the facts and circumstances of this case and under the terms of the statute cited herein. With regard to SCE&G's first request, this Hearing Officer simply does not have enough information to determine whether or not ORS should be required to abide by the same terms in general governing depositions in the ratepayer litigation. Such terms must be negotiated by the parties. With regard to being required to abide by "applicable confidentiality agreements," Section 58-4-55 (D) holds in part that "the regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the public utility's documents or information..." The statute goes on to state that such information or documents shall be treated as confidential or proprietary unless the Commission rules that the material is not entitled to protection from public disclosure, or the utility agrees that the information is no longer confidential or proprietary. Accordingly, this Hearing Officer is limited to holding that ORS is required by law to follow this statute with regard to confidentiality in its dealings with these depositions, at least in terms of depositions related to Commission proceedings. ORS, in its late-filed Reply, affirms its intent to abide by the statutory requirements. Of course, this Hearing Officer has no ability to rule on the terms and conditions proposed for the taking of depositions in the state-court action. As much as possible, ORS should coordinate with counsel for other parties, including SCE&G, to avoid duplicate depositions.

In any event, ORS is granted leave to take the oral depositions of the individuals stated above on the topics as stated above, and at such times and places as may be agreed upon, under the terms and conditions reflected above. Such depositions may be video depositions, if desired.

The Motion to Admit Deposition Testimony From These and Other Proceedings as Evidence is hereby held in abeyance at this time.

Order No. 2018-96-H
Docket Nos. 2017-370-E, 2017-207-E, and 2017-305-E
July 20, 2018
Page 5 of 5